

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT LAM, WAI MON MA,
VINCENT L. MONTALBANO, ARCH NUTTALL and NANDU N. RANADIVE

Application 10/708,066

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on June 1, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that an Appeal Brief was filed on December 22, 2005. In response, an Examiner's Answer was mailed on February 16, 2006.

It is noted that on page 3 of the Final Rejection mailed August 3, 2005 and on page 4 of the Examiner's Answer mailed February 16, 2006, the Boyer et al. and Toy et al. references were used in the 35 U.S.C. § 103(a) rejection of claims 2, 9 and 15. However, the Boyer et al. reference is not included in the "Evidence Relied Upon"

section of the Examiner's Answer. Section 1207(A)(8) of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 3, August 2005) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.
The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

If appropriate, compliance with MPEP § 1207(A)(8) is required by listing the Boyer et al. reference under the heading "Evidence Relied Upon."

In addition, it is noted that an Appeal Brief was filed on December 22, 2005. However, the Patent and Trademark Office records reflect that the Appeal Brief fee has not been charged.

Accordingly, it is

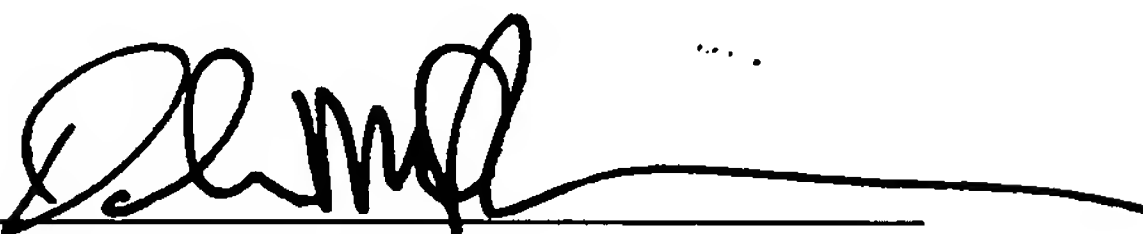
ORDERED that the application is returned to the Examiner:

1) for compliance with MPEP § 1207(A)(8), if appropriate, by adding the Boyer et al. reference to the "Evidence Relied Upon" section in a revised Examiner's Answer;

2) for having the Appeal Brief fee charged to Deposit Account No. 09-0458 as authorized by the transmittal sheet which accompanied the Appeal Brief filed December 22, 2005; and

3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
DALE M. SHAW
Deputy Chief Appeal Administrator
(571) 272-9797

DMS:psb

Canter Colburn LLP – IBM Fishkill
55 Griffin Road South
Bloomfield, CT 06002